***United States Court of Appeals***

***for the Second Circuit***


# BRIEF FOR APPELLEE

# 74-1365

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P/S

In The

# United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

*Appellant,*

*vs.*

PABLO BERRIOS, WILLIAM NUCHOW, MATTHEW PRINCIPE and JULIUS ZARETSKY,

*Appellees.*

*On Appeal from the United States District Court for the Eastern District of New York*

## BRIEF FOR APPELLEES, PABLO BERRIOS, WILLIAM NUCHOW and JULIUS ZARETSKY


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UNITED STATES OF AMERICA, :

Appellant, :

Docket No.

-against- :

74-1365

PABLO BERRIOS, WILLIAM NUCHOW, :
MATTHEW PRINCIPE, JULIUS ZARETSKY,

:

Appellees.

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BRIEF FOR APPELLEES PABLO BERRIOS,
WILLIAM NUCHOW, JULIUS ZARETSKY

STATEMENT OF ISSUES FOR REVIEW

1. Whether the District Court abused its discretion in concluding that the facts marshalled by appellees required an evidentiary hearing on the issue of discriminatory prosecution.

2. Whether the order of the District Court directing the government to submit to the court for review and possible disclosure to defense counsel the government's prosecutive memorandum was an appropriate method of

conducting an evidentiary hearing on the issue of discriminatory prosecution.

## STATEMENT OF THE CASE

### A. Nature of the Case

The appellee Pablo Berrios, formerly a Trustee and member of the Executive Board of Local 840, International Brotherhood of Teamsters, was indicted on a charge of violating 29 U.S.C. § 504(a), a misdemeanor, for holding an elective union office within five years after conviction of a crime proscribed by that statute (Count One) (A-2).

The appellees Nuchow, Zaretsky and Principe, all officers of the same Local Union, were indicted for violation of 29 U.S.C. § 504(a), a misdemeanor, for knowingly permitting Berrios to assume and hold the office (Count Two) (A-3).

Following the indictment of appellees on March 26, 1973 a series of motions were made, including inter alia, an application for a hearing on the issue of discriminatory enforcement of the statute in that appellee Berrios was selectively and invidiously prosecuted because he had been among

the few officials of Teamsters Locals in the United States who had been outspokenly vocal in his support of the candidacy of Senator George McGovern for President of the United States [1] (A-24-26). In support of his application Berrios offered to prove that there had been a long and bitter labor dispute between the Local Union and the Marriott Restaurant chain of which Donald Marriott, an important Nixon supporter, was a principal officer [2] (A-24).

The broader canvas against which the application for a hearing was made included (i) the relatively few prosecutions under the statute; (ii) the intimate financial relationship between Donald Marriott and the President of the United States; (iii) that Donald Nixon, the President's brother, was a senior corporate executive of Marriott Enterprises; (iv) that the International Brotherhood of Teamsters

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1/ The other defendants joined in the motion to dismiss the indictment on this ground.

2/ In fact Berrios had been indicted and subsequently acquitted before Judge Judd and a jury two months before the return of the superseding indictment herein. The charge there was that Berrios had attempted to firebomb the Marriott Restaurant at JFK International Airport (72 Crim. 1222, E.D.N.Y.).

contributed large sums of money to the Nixon campaign; (v) that Charles Colson, formerly Counsel to the President, and now the new General Counsel to the International Brotherhood of Teamsters had been involved in proceedings similar to the case at bar; (vi) that one of the people on the so-called "enemies list" prepared by Colson for John Daan and President Nixon was Harold Gibbons, formerly a high ranking Teamsters official who, like the defendant, had been a highly visible Teamsters McGovern supporter (Garbus Aff.) (A-24 - A-26).

B. Course of Proceedings: Decision Appealed From

On October 12, 1973 District Judge Orrin Judd heard oral argument on the question whether the appellees were entitled to a hearing at which defendants might prove discrimination in the enforcement of the statute (A-35).

The court received documentary evidence on the small number of prosecutions under the Act (A-30, 38), and an extended offer of proof consistent with the recitation contained in the Garbus affidavit, supra, including reference to testimony heard by Judge Judd at the earlier Berrios

trial (72 Crim. 1222 E.D.N.Y.) (A-36-49). The government in response suggested that no hearing should be held because defense counsel had produced "in essence nothing but speculation." (A-54).

The court, after hearing argument, held that the offer of proof was sufficient to justify a hearing (A-54) and indicated that at a hearing:

> "If there is some evidence that the Labor Department knew of other violations and did not report them or the Department of Justice had other violations reported to it and decided not to prosecute, that would be material." (A-55).

Judge Judd, clearly mindful of the standards in discriminatory enforcement cases, held that while the defendants would have the burden of proving their allegations at a hearing that "I think probably I can take this in steps" (A-59) and that "if I can have the memorandum recommending prosecution provided to the defendant and to the court, then I'll be able to determine whether the defendant is entitled to anything more." (Ibid.). Judge Judd reflected that "there has to be some consideration of the facts of the individual case"

and that

> "I think, to dispose of this part of the matter, I'll direct that the prosecution provide Mr. Garbus and me with a copy of the memorandum recommending prosecution, with any reference to grand jury testimony of known defendants excised . . . . I'll deny the application for the time being in all other respects then, you can determine on the basis of the order whether you think it is something you should comply with or take further steps." (A-63,64).

On November 16, 1973 Dennis Dillon, Chief Attorney of the Strike Force, wrote to the district court stating that there was no colorable entitlement to the defense of selective prosecution and refused to turn over the prosecutive memorandum to the court (A-85-87).

Thereafter on November 23, 1973 the District Judge directed that "the United States provide counsel for the defendant and the court with a copy of the memorandum of the United States Attorney or the Organized Crime and Racketeering Section, Department of Justice, recommending prosecution of the defendant." (A83,84).

On November 30, 1973, the defendants moved for

dismissal of the indictment based upon the government's failure to comply with the court's order (A-88-89).

On January 7, 1974, Judge Judd filed an order directing, inter alia, that the government "submit to the court the memorandum recommending the prosecution for the court's study and for release to the defendants of any portions thereof which the court shall determine are not required to be kept confidential." (A-113).

The court below also filed a memorandum opinion stating the reasons for the court's order. The memorandum stated that the government "may have had some uncertainty about the underlying reasoning or sanction which might result" (A-112) and it directed that the indictment be dismissed if the government failed to furnish the document within thirty days, ibid.

The court's memorandum opinion reviewed the offer of proof made by defense counsel (A-107-108) and stated that consistent with the standards set forth in United States v. Falk, 479 F.2d 616 (7th Cir. 1973, en banc), the defendant's allegations were sufficient to warrant a hearing on the selective prosecution issue. The court held that the offer in

fact was sufficient to create a prima facie case of selective prosecution and that the "defendant having shown that he was entitled to a hearing, it was within this court's discretion to order the production of material in the government's possession that would aid the defendants in their examination of witnesses." (A-110). The court then concluded that:

> "Given the right of the defendants in this case to examine the prosecuting authorities, the memorandum recommending prosecution became material to the conduct of such examination, and its production could be required at the hearing. The government has not even complied with that portion of the order that directed that the memorandum be supplied to the court. Examination of the memorandum by the court might perhaps have obviated an evidentiary hearing, by showing that there was no arguable basis for defendant's claim." (A-111).

Finally, the court, distinguishing United States v. Berrigan, 482 F.2d 171 (3d Cir. 1973) held that "in the instant case, this court has concluded that the defendants have met the[ir] burden and as such are entitled to such memoranda." (A-111). In disposing of the government's argument that Rule 16(b) of the Federal Rules of Criminal

Procedure exempts from discovery "reports, memoranda or other internal government documents made by government agents in connection with the investigation or prosecution of the case . . ." the court held that "[t]he rule covers pre-trial discovery. It does not dictate the procedure to be followed by the district courts in the actual conduct of hearings." (A-112).

On February 8, 1974 the District Court entered an order dismissing the indictment (A-114).

## POINT I

### THE DISTRICT COURT'S FINDING THAT DEFENDANTS OFFER OF PROOF OF DISCRIMINATORY PROSECUTION WAS SUFFICIENT TO WARRANT A HEARING WAS CONSTITUTIONALLY REQUIRED AND AN APPROPRIATE EXERCISE OF DISCRETION.

The government tacitly acknowledges that, consistent with its "constitutional duty to take care that the laws be faithfully executed," United States Constitution, Art. II § 3, the selective application of criminal statutes must meet the equal protection standard embodied in the Fifth Amendment, Bolling v. Sharpe, 347 U.S. 497; Washington v. United States, 401 F.2d 915, 922 (D.C. Cir. 1968).

Selective discrimination and bad faith enforcement of statute was held a violation of equal protection in the seminal case of Yick Wo v. Hopkins, 118 U.S. 356:

> "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations, material to their rights, the denial of equal justice is still within the prohibition of the Constitution." supra at 370.

The principle has been uniformly applied by federal and state courts both in cases where a prosecution is based upon an unjustified purpose, or an inherently suspect classification, and where individuals or small groups, as in this case, are discriminated against on the basis of their exercise of protected First Amendment activities, United States v. Falk, 479 F.2d, 616 (7th Cir. 1973).[3/]

The rationale of the rule is simple; that the government should not be permitted to bring to bear its massive power over the liberty of its citizens except in the neutral exercise of its duty to provide for the welfare of all its citizens on an equal basis.

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3/ See Oyler v. Boles, 368 U.S. 448 (1962); Two Guys from Harrison-Allentown, Inc. v. McGinley, 366 U.S. 582 (1961); Cox v. Louisiana, 379 U.S. 536 (1965); Fowler v. Rhode Island, 345 U.S. 67 (1952); United States v. Steele, 461 F.2d 1148 (9th Cir. 1972); United States v. Sacco, 428 F.2d 264, 271 (9th Cir. 1970); Moss v. Hornig, 314 F.2d 89 (2nd Cir. 1963); United States v. Alarik, 439 F.2d 1349; Washington v. United States, 401 F.2d 915, 922 (D.C. Cir. 1968); United States v. Maplewood Poultry Co., 320 F. Supp. 1395 (N.D. Maine, 1970); United States v. Robinson, 311 F. Supp. 1063 (W.D. Mo. 1969); People v. Gray, 254 Cal. App. 2d 256, 63 Cal. Rptr. 211 (1967); People v. Harris, 182 Cal. App. 2d 837, 5 Cal. Rptr. 852 (1960); People v. Winters, 171 Cal. App. 2d Supp. 876, 883, 342 F.2d 538, 543 (1959); People v. Utica Daw's Drug Co., 16 App. Div. 2d 12, 225 N.Y.S.2d 128 (1962). See annotations, 4 ALR 2d 404, 4 ALR 3rd 393.

The government's conduct which led the District Court to conclude that this was a prima facie case of discriminatory prosecution had two fatal vices: (i) it attempted to place too onerous a price on the exercise of First Amendment rights and (ii) it constituted, presumptively, a sufficiently unlawful discrimination to violate the due process clause of the Fifth Amendment.

In recent years district courts and courts of appeal have increasingly been loathe to "simply dismis[s] all allegations of illegal discrimination in the enforcement of criminal laws with a reference to Oyler v. Boles, 368 U.S. 448, and its statement that the conscious exercise of some selectivity in the enforcement of laws does not violate the Constitution," Falk, supra, at 624. The broad point of departure in instances of alleged discriminatory prosecution is that of Judge Cummings in Stamler v. Willis, 415 F.2d 1365, 1369-70 (7th Cir. 1969) that "the judiciary has always borne the basic responsibility for protecting the individuals against unconstitutional invasions of their rights by all branches of the government."

In United States v. Steele, 461 F.2d 1148 (9th Cir. 1972) the Court of Appeals for the Ninth Circuit

reversed a conviction where the inference could be drawn that the defendant (who was convicted of refusing to answer census questions) was prosecuted because of his First Amendment activities in opposing the census. The Court stated that:

> "The enforcement procedure that focuses upon the vocal offender is inherently suspect, since it is vulnerable to the charge that those chosen for prosecution are being punished for their expression of ideas, a constitutionally protected right," supra, at 1152.

Similarly in MacDonald v. Musick, 425 F.2d 373 (9th Cir. 1970) the Court of Appeals for the Ninth Circuit reversed a conviction where a defendant had been prosecuted for the purpose of discouraging him from exercising his First Amendment rights. There the District Attorney had offered to withdraw a charge of driving while intoxicated if the defendant would stipulate to the existence of probable cause for arrest. Following refusal by the defendant to stipulate he was tried and convicted. The Court of Appeals reversed on the ground that a prosecutor cannot use his discretion to coerce a defendant into surrendering his

First Amendment right to petition the government for a redress of grievances. See also United States v. Crowthers, 456 F.2d 1074 (4th Cir. 1972); United States v. McLeod, 385 F.2d 734 (5th Cir. 1967); Lenske v. United States, 383 F.2d 20 (9th Cir. 1967, Judge Madden,concurring opinion); Dixon v. District of Columbia, 394 F.2d 966 (D.C.C. 1968); Scott v. United States, 419 F.2d 264 (D.C.C. 1969).

Indeed in one of the principle cases relied upon by the government here, United States v. Berrigan, 482 F.2d 171 (3d Cir. 1973) the Court of Appeals, while sustaining the District Court's denial of a discriminatory prosecution motion because the defendants failed to prove the existence of an unconstitutional purpose, quoted with approval the District Court's statement that if:

> "these motives, attributed to the Department of Justice, be sustained there would be no doubt in our mind that prosecution here would fall outside of the proscribed limits of the discretionary control of the Executive over the prosecution of criminal cases." United States v. Ahmad, 347 F. Supp. 912, 968 (M.D. Pa. 1972)

In this case the District Court found that the detailed standards utilized by the en banc court in United States v. Falk (referring with approval to the leading case in this Circuit, Moss v. Hornig, 314 F.2d 89 (2d Cir. 1963, Lumbard, J.)), were met, i.e., (i) "that since 1959 there have been only a few prosecutions under 29 U.S.C. § 504 and since 1969 there have been only three;[4/] (ii) that Berrios was indicted after having been involved in a labor dispute with the Marriott Corp.; (iii) that Mr. Marriott was the Chairman of President Nixon's 1968 and 1972 campaign organizations; (iv) that Donald Nixon, the President's brother, is a Vice President of Marriott; (v) that Marriott's attorney, Herbert Kalmbach, is also President Nixon's attorney; (vi) that there was an internal battle in the Teamsters Union between those who supported President Nixon's campaign for reelection and those who supported the candidacy of Senator McGovern; and (vii) that defendant Berrios was one of the few Teamster officials who publicly supported Senator McGovern.

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4/ There in fact have been a total of eight prosecutions since the enactment of the statute in 1959, some fifteen years, and only one of the crime of knowingly permitting another to hold union office. (See Attachment A annexed hereto p. 21, infra.)

The Court below held, consistent with the Falk standard, "that he [the defendant] offered to prove that prosecution was rare under the statute, that the prosecution was initiated 'at the top' and that the prosecution was initiated because of the defendant's exercise of rights guaranteed by the First Amendment." (A-109).

The government here argues that defendant's position is one of mere conjecture. The District Court found in the exercise of its discretion that a prima facie case had been made out and it is the government's burden here to prove that the District Court abused its discretion. United States v. Jordan, 399 F.2d 610 (2d Cir. 1968); Gevinson v. United States, 358 F.2d 761, 766 (5th Cir. 1966).

## POINT II

### THE DISTRICT COURT CORRECTLY ORDERED PRODUCTION AND INITIAL IN CAMERA REVIEW OF THE GOVERNMENT'S PROSECUTIVE MEMORANDUM.

The government misapprehends both the specific terms of the District Court's opinion and the Court of Appeals' decisions in United States v. Berrigan, 482 F.2d 171 (3d Cir. 1973) and United States v. Falk, 479 F.2d 616 (7th Cir. 1973, en banc). The District Court determined that the defendants had met their burden, as a prima facie matter, of colorable entitlement to the defense of discriminatory prosecution. Having made such a finding the court concluded that defendants were entitled to the prosecution's memorandum to aid in a hearing on the issue. Cf. Brady v. Maryland, 373 U.S. 83).

In doing so the District Court specifically did not place reliance on the pretrial discovery provisions of Federal Rules of Criminal Procedure 16, noting merely that disclosure would not be inconsistent with that Rule, and that Rule 16(b) "does not dictate the procedure to be followed by the district courts in the actual conduct of

hearings (A-111-112). This finding is consistent not only with traditional exercise of discretion once a hearing has commenced, Campbell v. United States, 365 U.S. 85, 95; United States v. Steele, 46 F.2d 1148 (9th Cir. 1972); Dixon v. District of Columbia, 394 F.2d 966 (C.A.D.C. 1968); United States v. Crowthers, 456 F.2d 1074 (4th Cir. 1972); United States v. Falk, supra,[5] but also with the standards contained in the Proposed Rules of Evidence for United States Courts and Magistrates,[6] Rule 509(c).

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5/ In fact the government in its brief before the en banc Court of Appeals in Falk raised the identical contention of exemption of intra-agency memoranda from disclosure (Gov. Br. pp. 15-16). The Court of Appeals did not comment upon the argument.

6/ Procedures: "The judge may hear the matter in chambers, but all counsel are entitled to inspect the claim and showing and to be heard thereon, except that, in the case of secrets of state, the judge upon motion of the government, may permit the government to make the required showing in the above form in camera. If the judge sustains the privilege upon a showing in camera, the entire text of the government's statements shall be sealed and preserved in the court's records in the event of appeal. In the case of privilege claimed for official information the court may require examination in camera of the information itself. The judge may take any protective measure which the interests of the government and the furtherance of justice may require."

The government here makes no formal assertion of claim of privilege that "official information" Rule 509(a)(2), supra, is contained in the prosecutive memorandum -- however, even if such a claim were made the proposed Rule regarding such "official information" details a procedure completely consonant with the action of the District Court below.

Judge Judd, mindful of the potential need to redact from the memorandum any material which would disclose confidential sources of information (A-61) ordered the government as an initial matter to "submit to the Court for review" (A-114). In addition he made clear that while there might be "possible disclosure to the defendants [of] the memorandum recommending prosecution" (A-114) that if it contained in his discretion no arguable basis for defendant's claim (A-111), examination by the court might perhaps have "obviated an evidentiary hearing" (A-111).

The government makes no attempt to meet this argument, reiterating nothing more than the existence of an unrelated pretrial discovery rule which the court had already ruled upon in an earlier motion by the defendant. The District Court made clear that while Rule 16(b) might be

applicable where no prima facie case is presented as an initial matter, where defendants, as here, have met their burden of proving "colorable entitlement" they would not only be entitled to such memorandum but if necessary entitled to interrogate government attorneys as in Berrigan, supra.

## CONCLUSION

The order of the District Court dismissing the indictment should be affirmed.

Respectfully submitted,

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Michael B. Standard,
Of Counsel

Dated: May 30, 1974

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Office of Labor-Management and Welfare Pension Reports
WASHINGTON, D.C. 20216

JUN 12 1973

Mr. Herbert Jordan
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30 East 42nd Street
New York, New York 10017

Dear Mr. Jordan:

This is in reply to your letter of April 6, 1973, in which you request information with regard to the number of indictments which have been returned for alleged violations of section 504 of the Labor-Management Reporting and Disclosure Act of 1959, As Amended.

The 1969 report of the Department of Labor entitled "Compliance, Enforcement and Reporting in 1969 Under the Labor-Management Reporting and Disclosure Act" contains material with regard to criminal activities under the Act covering the first ten years of its administration. Table 3 at page 23 sets forth activity in this area. A copy of that page is included for your information. Please note the asterisk and the footnote in relation thereto. This is important as it makes clear that this Office is not in a position to furnish definitive information in this area, since the basic responsibility for criminal enforcement rests with the Department of Justice.

Please note also the substance of the first paragraph in the left column below the table which should be of interest to you.

I am also enclosing a copy of page 28 of that same report. The substance of the fourth paragraph in the left column involves information relative to your research. The material in footnotes 57 and 58 should be of value.

United States v. Priore, mentioned in footnote 58, actually involves three defendants. The U.S. District Court for the Eastern District of New York in discussing a motion for a new trial stated in part:

> "At the same trial, the jury convicted defendant, Harry Charton, president of the local for violation of Section 504(a) for knowingly permitting defendant Priore to assume and hold a paid position as an organizer of the said local."

We have no information as to the date of Harry Charton's indictment, although it probably was at the same time that Jack Priore was indicted. Sam Smetterling, Secretary-Treasurer of the local union, was acquitted.

Harry Serio, one of the principals in Serio v. Liss also referred to in footnote 58, was indicted for violation of section 504(a) in Newark, New Jersey, on December 13, 1961, and found guilty on May 10, 1962.

Apart from the civil proceeding involving Clarence Jalas, also mentioned in footnote 58, there was an indictment returned against him in the district court in Illinois on October 21, 1969. This was dismissed on January 5, 1970.

Our records indicate that on September 27, 1962, an indictment was returned in Detroit, Michigan, against Samuel Marroso for serving as a labor relations consultant in violation of section 504. The records indicate that this action was dismissed on March 26, 1966.

Edward C. Kuhle, an organizer for the Independent Machine Workers of Keansburg, New Jersey, was indicted for violating section 504 on January 6, 1962. However, the case was dismissed on recommendation of the U.S. Attorney.

Ferdinand J. Boeckman, Vice President of Local 1022 of the Electrical Workers (IUE) at St. Anne, Missouri, was indicted for violations of sections 501(c) (embezzlement) and 504 on May 24, 1963. He was found guilty on July 30, 1963.

Arthur A. Gobbo, allegedly a clerk of Toy Workers Local 298 in Union City, New Jersey, was indicted on November 12, 1970, for violating section 504 in that he undertook other than clerical or custodial duties. This case is expected to come to trial sometime this month.

On June 2, 1971, Tony Pernicano, Business Manager of Doll and Toy Workers Local 26 in Mount Clemens, Michigan, was convicted for violation of section 504(a) of the Act. This resulted from a criminal information. Previously, Tony Pernicano, then President and Business Agent, had pleaded guilty to a violation of section 209(c) of Title II of the Act but continued to hold office in Local 26.

The most recent case, according to our records, involves officers of Local 840 of the Teamsters in New York. William Nuchow, Secretary-Treasurer, Matthew Principe, a Trustee, and Julius Zeretsky, also a Trustee, were indicted on March 26, 1973, for permitting Paul Berrios to serve as an Executive Board member of the local even though Berrios had been convicted for the crime of arson.

You will note that we have not mentioned the case of United States v. Brown since we assume that you are familiar with that Supreme Court decision involving the constitutionality of the Communist clause of section 504.

I wish to again call your attentior to the fact that under the Memorandum of Understanding dated February 19, 1960 (25 F.R. 1708), between the Secretary of Labor and the Attorney General of the United States, the enforcement of the provisions of section 504 is the responsibility of the Department of Justice. Under the circumstances, you may wish to communicate with that Department for such information as it may have available to aid you in your research.

I hope this information is helpful.

Sincerely yours,

H. G. Borchardt

H. G. Borchardt
Assistant Director for Regulations
and Administrative Rulings

Enclosures

A 201 Affidavit of Service by Mail

LUTZ APPELLATE PRINTERS, INC.

U.S. COURT OF APPEALS:SECOND CIRCUIT

U.S.A.,
Appellant,

against

BERRIOS, et al,
Appellees.

Index No.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, Laurel N. Huggins, being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1050 Carroll Place, Bronx, New York

That upon the 30th day of May 1974, deponent served the annexed Appellees' Brief

upon * attorney(s) for

* in this action, at *

the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.

Sworn to before me, this 30th day of May 1974

Laurel N. Huggins

Print name beneath signature

LAUREL N. HUGGINS

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0118950
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975

* Denis E. Dillon-Attorney for Appellant-Organized Crime and Rac anti-Racketeering Section, Dept. of Justice, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, N.Y.

Phyllis Bamberger-Legal Aid Appeals Bureau, Fed. Division, U.S. Courthouse, Foley Square, N.Y. Attorney for Appellee Principe.